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No. 369

IN THE

Supreme Court of the United States

48 Term, 1949

ROSETTE SORGE SAVORGNAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA, TOM C. CLARK, THE ATTORNEY GENERAL FOR THE UNITED STATES OF AMERICA, and WATSON B. MILLER, COMMISSIONER FOR IMMIGRATION AND NATURALIZATION SERVICE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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To the Honorable Fred M. Vinson, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, Rose Sorge Savorgnan, by her counsel respectfully represents to this Honorable Court:

SUMMARY STATEMENT OF THE MATTER INVOLVED

This is an action brought in the United States District Court for the Western District of Wisconsin for a declaratory judgment under the provisions of Section 503 of the Nationality Act of 1940 establishing the American citizenship of the plaintiff.

The plaintiff was a native born American citizen (T. R. 9) whose parents were likewise native born Americans. (T. R. 12) While employed in St. Louis in 1939 she was introduced to Alessandro Savorgnan (T. R. 13) a diplomatic officer of the Italian Government, (T. R. 9) and in December, 1940, they were married. (T. R. 9)

Prior to her marriage, the plaintiff was informed that because of his status as a diplomatic officer, consent of the Italian Government was necessary before Mr. Savorgnan could marry the plaintiff, and that such consent could not be obtained unless the plaintiff obtained the status of an Italian citizen. (T. R. 13, 14, 16) At the same time, however, as the trial court found, the plaintiff was assured that in acquiring Italian citizenship, she would not lose her American citizenship. (T. R. 10) Upon the assumption that her citizenship would not be affected, the plaintiff made application for Italian citizenship March 28, 1940. (T. R. 16) By Royal Decree, dated August 25, 1940, the plaintiff was grantetd Italian citizenship, (T. R. 17) but the only knowledge which the plaintiff possessed with respect to such grant, consisted in a conversation over the telephone that permission had been given for the marriage. (T. R. 17)

On the 23rd day of November, 1940, the plaintiff signed a document written wholly in Italian purporting to be a renunciation of her American citizenship and an oath of

allegiance to the King of Italy. (T. R. 19-20) At the time the plaintiff signed the document she could neither read, write nor speak the Italian language. (T. R. 21). Furthermore, the trial court found (T. R. 66-67) that there was no formality in connection with the signing; that is, there was no actual taking of an oath, (T. R. 20) and there was no intention on the part of the plaintiff to renounce her allegiance to this country, and that the plaintiff did not intend to divest herself of American citizenship. (T. R. 66-67)

On the 15th day of July, 1941, the plaintiff's husband was compelled by Executive Order of the President of the United States to leave this country practically without notice, and without any opportunity for the plaintiff to obtain an American passport. (T. R. 65) The trial court found that when the plaintiff left this country she had no intention of establishing a permanent residence abroad or of abandoning her residence in the United States. (T. R. 65) Because of the outbreak of the war, the plaintiff was prevented from returning to the United States until 1945. (T. R. 65)

After arrival in this country, the plaintiff made application to the Commissioner of Immigration for a determination that she was an American citizen, and on the 28th of June, 1946, the Acting Commissioner of Immigration advised the plaintiff as follows: (T. R. 1-2)

> "The matter was considered by the Commissioner, and in part he ruled as follows: 'The question is a perplexing one; the answer is not clear. Administrative practice over many years goes one way; the legal conclusions here expressed with persuasion go the other; the State Department has a third theory. This is the kind of matter which may never be settled with sureness until passed upon by the courts. Accordingly, the case should be decided against the claimant in the pending

administrative proceedings. She may then seek judicial review if she so chooses.'"

The trial court made exhaustive Findings of Fact and Conclusions of Law, (T. R. 64-67) and entered judgment decreeing that the plaintiff never lost or relinquished her United States citizenship and that she is now and has been since the date of her birth a citizen of the United States. (T. R. 67)

The Court of Appeals reversed the judgment of the trial court and held that the plaintiff lost her citizenship on the following ground by the execution of the document on the 23rd day of November, 1940, and thereby the plaintiff (a) Became naturalized in Italy under Section 2 of the Act of March 2, 1907, 8 U. S. Code, Section 17 (1934 Edition), and, (b) Took an oath of allegiance to Italy.

The Court also held that it was unnecessary under the 1907 Act for the plaintiff to take up a residence in a foreign state in order to become expatriated upon the authority of *Mackenzie vs. Hare*, 239 U. S. 299, which held that the right of citizenship of an American female citizen was suspended through her marriage to an alien. Lastly, it was held that under the 1940 Nationality Act, the plaintiff became expatriated through the establishment of a residence in Italy.

JURISDICTIONAL STATEMENT

It is contended that the Supreme Court has jurisdiction to review the judgment here in question because the Court of Appeals of the Seventh Circuit (a) "has decided an important question of Federal law which has not been but should be settled by this court"; (b) "has decided a Federal question in a way probably in conflict with applicable" decisions of this Court.

QUESTIONS PRESENTED

The following questions are presented:

(a) Shall the plaintiff be deprived of her status as a native born American citizen except upon final judgment by the Supreme Court of the United States.

(b) Is the decision of the Court of Appeals that the plaintiff lost her citizenship while continuing to reside in the United States in conflict with the decision of this Court in *Mackenzie vs. Hare*, 239 U. S. 299.

(c) Did the plaintiff lose her citizenship under the Act of March 2, 1907, by being naturalized in or taking an oath of allegiance to the foreign state of Italy.

(d) Did the plaintiff become expatriated as a United States citizen under the Act of March 2, 1907 or the 1940 Nationality Act without leaving the United States.

(e) Did the plaintiff under the 1940 Nationality Act, become expatriated by taking up a residence abroad.

(f) Is the plaintiff now an American citizen.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

1. An important question of Federal law is presented. No right or privilege in the world today is of greater importance than the right of American citizenship. The plaintiff therefore should not be deprived of her status as an American citizen except by final judgment of the Supreme Court of the United States.

2. The plaintiff's rights of citizenship are not to be destroyed by an ambiguity. *Perkins vs. Elg*, 307 U. S. 325. The fact that the trial court and the Court of Appeals have disagreed in their conclusions, indicates the presence of an ambiguity. In refusing to determine that the plaintiff is now an American citizen the Commissioner of Immigration recognized that there was an ambiguity by pointing out that "the question was a perplexing one; the answer is not clear; administrative practice over many years goes one way; the legal conclusions here expressed with persuasion go the other; the State Department has a third theory. This is the kind of matter which may never be settled with assurance until passed upon by the Courts." The Commissioner of Immigration correctly stated that the question here presented has not been passed upon by the United States Supreme Court.

3. *Mackenzie vs. Hare*, 239 U. S. 299, held that under Section 3 of the Act of 1907, an American woman assumed the nationality of her husband upon her marriage to an alien, notwithstanding her continued residence in the United States. No question of expatriation was involved. On the contrary the statute was correctly interpreted to permit the resumption of American citizenship upon the cessa-

tion of the marital status subject to the statutry conditions.

4. The Court of Appeals construed the decision in *Mackenzie vs. Hare*, 239 U. S. 299, to impel the conclusion that the plaintiff was permanently expatriated, and therefore deprived of her citizenship under Section 2 of the Act of March 2, 1907, before she left the United States. Section 2 of the Act of March 2, 1907, however applies only to expatriation and not to a mere suspension of the right of citizenship resulting from marriage to an alien. Hence the Court of Appeals has decided a Federal question in conflict with the applicable decision of this Court.

5. The plaintiff did not lose her citizenship under Section 2 of the Act of March 2, 1907. This section provides that expatriation results when an American citizen has been naturalized in a foreign state. The plaintiff could be naturalized in Italy only by being present in that country under the clear language of the statute. *Petition of Prack*, 60 F. (2d) 171.

6. The plaintiff did not take an oath of allegiance to the State of Italy within the meaning of Section 2 of the Act of March 2, 1907, and hence did not become expatriated thereby. The trial court found as a fact that the plaintiff could not read, write or understand the Italian language. (T. R. 65); and that there were no formalities involved at the time the plaintiff signed the document in Italian containing the renunciation of American citizenship and the oath of allegiance to the King of Italy. (T. R. 65) The plaintiff therefore did not take an oath within the meaning of the statute by being sworn and reciting the oath. That such ceremony was required under the Act of March 2,

1907, in order to constitute the taking of an oath clearly appears from the provisions of Section 401(b) of the Nationality Act of 1940, 8 U. S. C. A. Sec. 801, which provides that a citizen may be expatriated: (1) by taking an oath (2) or making an affirmation, (3) or other formal declaration of allegiance to a foreign state. The failure to administer an oath formally has been held not to constitute the taking of an oath under the statute. In the matter of E———— Exclusion Proceedings decided by the Immigration and Naturalization Board in 1943, Volume 1 Page 548 Administrative Decisions under Immigration and Naturalization Laws of the United States (1940-1943) *In re Gogal*, 75 F. Supp. 268, 270, 271 (1947); *Schioler vs. United States*, 75 F. Supp. 353, 355 (1948); *McCampbell vs. McCampbell*, 13 F. Supp. 847, 849 (1936); 30 Op. A. G. 412, 421.

7. The trial court found as a fact that at the time the plaintiff signed the Italian language document containing the renunciation of American citizenship and the oath of allegiance to the King of Italy she relied on the statement and assurance by her husband that she would merely acquire a technical Italian citizenship, which status would not endanger her American citizenship (T. R. 67); that she had no intention of renouncing her allegiance to this country (T. R. 66); and that she never voted at any election in Italy, but did vote in Wisconsin before and after her marriage. (T. R. 67)

8. For many years prior to the enactment of the Nationality Act of 1940, the Act of March 2, 1907 was interpreted as requiring residence in a foreign country in addition to an oath of allegiance in order that expatriation might

result. Letter of Instruction by the Department of State 1933, Hackworth Digest of International Law Volume 3, Pages 228, 230, 231, (1942). The plaintiff did not leave the United States until after the enactment of the 1940 Nationality Act, and therefore could not have taken up a permanent residence outside the United States until after the repeal of the Act of March 2, 1907.

9. Section 403a of the Nationality Act of 1940 (8 U. S. C. A. Section 803a) with certain exceptions not here material, expressly recognizes the rule previously obtaining, by providing that no national may expatriate himself while in the United States, but expatriation shall result if and when the national thereafter takes up a residence abroad. Section 104 of the Nationality Act of 1940 (8 U. S. C. A. Section 504) provides that "the place of general abode shall be deemed the place of residence" for the purposes of Section 403 of the Nationality Act of 1940 (8 U. S. C. A. Sec. 803a) Clearly the plaintiff did not take up a residence abroad. In the first place, the trial court found that the plaintiff left the United States on July 15, 1941, with her husband because of an Executive Order in this country which compelled the departure, and that the plaintiff was given practically no notice and no opportunity to make a planned departure. (T. R. 65) In the second place, the plaintiff did not take up a residence abroad because the plaintiff did not establish a place of general abode in a foreign country. In this respect, the trial court found that when the plaintiff left the United States she had no intention of establishing her permanent residence abroad or abandoning her residence in the United States. The trial court further found that due to the outbreak of the war and its continuation after the plaintiff's arrival in Italy,

she was compelled to remain in that country from July, 1941, until she returned to the United States in 1945, and that her absence from the United States during that period was due entirely to war time conditions. (T. R. 65) It follows therefore, that the plaintiff did not become expatriated by taking up a residence abroad.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the Court of Appeals for the Seventh Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Court of Appeals had in the case numbered and entitled on its docket No. 9650, Rosette Sorge Savorgnan, Appellee, vs. The United States of America, Tom C. Clark, Commissiosner of Immigration and Naturalization Service, Appellants, to the end that this cause may be reviewed and determined by this court as provided for by the Statutes of the United States; and that the judgment herein of said Court of Appeals be reversed by the Court, and for such further relief as to this court may seem proper.

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Respondents.

Brief in Support of Petition for Writ of Certiorari

THE OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported in 171 Federal Reporter (2d) 155. The opinion is also printed in full in the record. (T. R. 86-92)

JURISDICTION

The jurisdiction of this Court is invoked under Section 240a, of the Judicial Code, 28 U. S. C. A. Section 347. The United States Court of Appeals for the Seventh Circuit in this case "decided an important question of federal law which has not been, but should be settled by this court" and "has decided a federal question in a way probably in conflict with applicable decisions of this court." (Supreme Court Rule 38 (5) (b).

Judgment was entered in this case by the United States Court of Appeals for the Seventh Circuit on December 14, 1948. A Petition for Rehearing was denied on January 8, 1949.

STATEMENT OF THE CASE

There are no contraverted issues of fact in this case. The plaintiff was born at Reedsburg, Wisconsin, on May 2, 1915 of native born parents. (T. R. 64) From the date of her birth until July 15, 1941, the plaintiff resided continuously in the United States. (T. R. 64)

In 1939 the plaintiff became acquainted with Allessandro Savorgnan, her future husband, at St. Louis, Missouri. (T. R. 13) On the 26th day of December, 1940, the marriage took place at Waukon, Iowa. (T. R. 9) Savorgnan was employed by the Italian Diplomatic Service, and it was therefore necessary for him to obtain consent of the Italian Government before he could legally be married. (T. R. 41) Consent to such marriage would not be granted unless the prospective bride was an Italian citizen. (T. R. 41)

On March 23, 1940, the plaintiff made application for Italian citizenship. (T. R. 40) By Royal Decree, dated August 25, 1940, the plaintiff was granted Italian citizenship. (T. R. 17, 44)

On the 23rd day of November, 1940, the plaintiff signed a document in the Italian language, which she neither could read, write, speak or understand, (T. R. 65) containing a renunciation of American citizenship and an oath of office to the foreign state of Italy. (T. R. 49) The trial court found upon the undisputed testimony that the plaintiff in signing the document assumed it was a step in obtaining the consent of the Italian Government to the marriage (T. R. 66); that there were no formal proceedings taken in connection with the signing of the document and no oath actually administered (T. R. 63); that at the time she signed the document, the plaintiff had no intention of renouncing her allegiance to the United States (T. R. 66); that the plaintiff did not intend to establish a permanent residence in any other country (T. R. 66-67); that when she signed the document, the plaintiff relied upon her husband's statement and assurance that she would not endanger her American citizenship (T. R. 67); that the plaintiff did not vote in Italy but did vote in the United States both before and after her marriage. (T. R. 67) Lastly, the trial court found that the plaintiff did not knowingly renounce her American citizenship, and that she is now and has been since the date of her birth, a citizen of the United States. (T. R. 67)

SPECIFICATION OF ERRORS

The United States Court of Appeals erred:

1. In holding that the plaintiff became naturalized in the foreign state of Italy.

2. In holding that the plaintiff took an oath of allegiance to the foreign state of Italy.

3. In holding that the plaintiff took up a residence in Italy.

4. In holding that the acts of the plaintiff prior to the enactment of the Nationality Act of 1940 resulted in naturalization in Italy under that Act.

5. In holding that the plaintiff voluntarily relinquished her American citizenship.

6. In holding that the plaintiff is not an American citizen.

ARGUMENT

I.

THE PLAINTIFF DID NOT BECOME EXPATRIATED BY BEING NATURALIZED IN THE FOREIGN STATE OF ITALY.

Despite the finding of the trial court that the plaintiff was not expatriated as an American citizen the Court of Appeals held that the plaintiff was naturalized in the foreign state of Italy. Such finding is wholly unsupported by the record.

1. *Statutes involved.*

The propriety of the finding of the Circuit Court of Appeals depends upon the interpretation of the Act of March 2, 1907 and the Nationality Act of 1940. Section 2 of the Act of March 2, 1907, so far as here material provides: (8 U. S. C. Section 17, 1934 Edition)

> "Any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state."

Section 3 of the Act provides (8 U. S. Code, Section 9, 1934 Edition):

> "A woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage after March 3, 1931, unless she makes a formal renunciation of her citizenship before a court having jurisdiction over naturalization of aliens."

Section 401 of the Nationality Act of 1940 (8 U. S. C. A., Section 801) provides in part as follows:

"A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

(a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person;

(b) Taking an oath or making an affirmation or other formal declaration to a foreign state; or

(c) Entering, or serving in, the armed forces of a foreign state unless expressly authorized by the laws of the United States, if he has or acquires the nationality of such foreign state; or

(d) Accepting, or performing the duties of, any office, post, or employment under the government of a foreign state or political subdivision thereof for which only nationals of such state are eligible; or

(e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or

(f) Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(g) Deserting the military or naval service of the United States in time of war, provided he is convicted thereof by a court martial; or

(h) Committing any act of treason against, or attempting by force to overthrow or bearing arms against the United States, provided he is convicted thereof by a court martial or by a court of competent jurisdiction."

Section 403 of the Nationality Act of 1940 provides:

> "(a) Except as provided in subsections (g) and (h) of section 401. no national can expatriate himself, or be expatriated, under this section while within the United States or any of its outlying possessions, but expatriation shall result from the performance within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this section if and when the national thereafter takes up a residence abroad."

Section 347 of the Nationality Act of 1940, Section 747, provides in part that it shall not be construed to:

> "* * * effect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any act, thing, or matter, civil or criminal, done or existing, at the time this chapter shall take effect; but as to such prosecutions, suits, actions, proceedings, acts, things, or matters, the statutes or parts of statutes repealed by this chapter, are hereby continued in force and effect."

2. *The plaintiff was not naturalized in a foreign state.*

The Court of Appeals held that an American citizen could expatriate himself by becoming naturalized in a foreign state regardless of his removal from this country. (T. A. 89) In arriving at its conclusion, the Court of Appeals disregarded the plain language of the Act of March 2, 1907. Section 2 of the Act provides that an American citizen shall be deemed to have expatriated himself when he "has been naturalized in any foreign state." The language of the statute is clear. A person can

be naturalized in a country only in the event he is physically present in the country. *Petition of Prack*, 60 F. Supp. (2d) 171.

The Court of Appeals interpreted the statute as if it provided for expatriation when an American citizen has been naturalized "by" any foreign state. Had the Congress intended that any such meaning be attributed to the statute, it would have used apt language to that end.

The Court of Appeals also held that the plaintiff became naturalized in a foreign state under the Nationality Act of 1940. Here again the conclusion of the Court of Appeals is fallacious. Section 401 (a) of the Nationality Act provides that a person shall lose his nationality by "obtaining naturalization in a foreign state." It is clear that the 1940 Act, as does its predecessor, clearly provides that expatriation follows naturalization in a foreign state, which of course, requires the presence of the person to be naturalized in the foreign state.

The Government in its brief upon the appeal to the Court of Appeals admitted that the plaintiff "did not, strictly speaking, obtain 'naturalization' as an Italian citizen" subsequent to the effective date of the Nationality Act. Indeed any argument which required an interpretation of the word "in" as meaning anything except physical presence in the country in which naturalization was obtained would render the statute ambiguous. Any ambiguity must be resolved in favor of the plaintiff, because of the principle long established that the rights of citizenship are not to be destroyed by an ambiguity. *Perkins vs. Elg*, 307 U. S. 325.

A specious argument may be advanced by counsel for the Government positioned upon the provisions of Section

403 (a) of the Nationality Act of 1940 to the effect that the status of the plaintiff with respect to naturalization is dependent upon the Nationality Act of 1940 and not upon the previous act and that the various acts referred to in Subsections (a) to (f) inclusive of Section 401 of the Nationality Act of 1940 may result in expatriation, notwithstanding the presence in the United States of the citizens affected, provided residence is subsequently taken up abroad. The infirmity of the argument becomes apparent upon a mere cursory investigation of the provisions of the statute referred to. Expatriation cannot result from the performance within the United States of the acts or the fulfillment of the conditions specified in the statute so far as subdivisions (c), (d) and (e) are concerned. Entering or serving in the armed forces of a foreign state, requires presence of the national in the foreign state. Likewise performance of the duties of any office, post or employment under the Government of a foreign state or political subdivision ordinarily would require presence of the citizen in such foreign state. Similarly, voting in a political election in a foregn state or participating in an election or plebescite to determine the sovereignty of foreign territory would require presence in the foreign state. Lastly there is nothing in Sction 403 (a) of the Statute which in any way qualifies the language in Section 401 (a) providing for loss of nationality by obtaining naturalization "in" a foreign state.

The Circuit Court of Appeals relied upon *Mackenzie vs. Hare*, 239 U. S. 299, to support its conclusion that the plaintiff was expatriated by becoming a citizen of Italy notwithstanding her continued residence in this country. The argument of the Court of Appeals is a complete *non sequitur*. Section 3 of the Act of March 2, 1907, simply

provides that upon her marriage to an alien, an American woman assumes the nationality of her husband for the duration of the marital relationship. Upon the dissolution of the marriage, however, the statute expressly provides that if the American woman is living in the United States, her citizenship is automatically re-assumed, and in the event of residence abroad, she may resume her citizenship by complying with the statutory requirements.

It thus appears too clear for argument that no question of expatriation is involved through the marriage of an American woman to an alien. Her American citizenship is simply suspended during the period of her marriage. She automatically resumes the mantle of American citizenship the moment the marital relation ceases. It is obvious, therefore, that the suspension of American citizenship depends entirely upon the marriage relation and not upon residence. Hence *Mackenzie vs. Hare*, 239 U. S. 299, (1915) has no bearing with respect to the interpretation of Section 2 of the Act of March 2, 1907.

II.

THE PLAINTIFF DID NOT BECOME EXPATRIATED BY TAKING AN OATH OF ALLEGIANCE TO A FOREIGN STATE.

Section 2 of the Act of March 2, 1907, provides that an American citizen may become expatriated when he has taken an oath of allegiance to any foreign state. Upon the assumption *arguendo* that the plaintiff took an oath of allegiance, she nevertheless did not become expatriated under the Act of March 2, 1907. Despite the fact that there was

no specific provision in the 1907 Act which required a foreign residence coupled with an oath of allegiance to accomplish expatriation, no American was ever held to be deprived of his American citizenship unless he took up a residence abroad. In the Matter of W———— (1943) Administrative Decisions under Immigration & Nationality Laws of the United States, Vol. 1, page 559, 560 (1940-1943). *Talbot v. Jansen*, 3 Dall. (3 U. S.) 133, (1795); *The Santissima Trinidad*, 7 Wheat. (20 U. S.) 283, (1822); *Comitis v. Parkerson*, 56 Fed. 556, (La. 1893); 3 Hackworth, *Digest of International Law*, 228-231; *Ex Parte Griffin*, 237 Fed. 445 (D. C. N. Y. 1916)

The previous decisions with respect to change of residence were incorporated in the Nationality Act of 1940, Section 403 (a), which expressly provides that no American can expatriate himself simply by taking an oath of allegiance, as provided in Section 401 (b) of the Act, unless he thereafter takes up a residence abroad.

Section 104 of the Nationality Act of 1940 provides that for the purpose of Section 403, the term place of residence shall be defined as follows:

> "For the purposes of section * * * 403 * * * of this chapter the place of general abode shall be deemed the place of residence."

The record conclusively establishes the fact that the plaintiff never established a place of general abode or a residence in Italy. The trial court found that the plaintiff and her husband left the United States solely by reason of an Executive order of the President of the United States, that neither the husband nor the plaintiff were given an opportunity to make the necessary arrangements for leav-

ing, and that the plaintiff was not given an opportunity to obtain an American passport. (T. R. 65) The trial court further found that when the plaintiff left this country she had no intention of establishing a permanent residence abroad or of abanding her residence in the United States. (T. R. 65) While it is true that the plaintiff remained out of this country until 1945, the trial court found that such continued residence abroad was caused entirely by the war. (T. R. 65)

The argument thus far has proceeded upon the hypothesis that an oath of allegiance was in fact taken by the plaintiff. The trial court found as a fact that the plaintiff merely signed a statement containing an oath; that there was no ceremony in connection with the signature and that the plaintiff did not in fact take an oath of allegiance to Italy (T. R. 66-67) This finding was based upon the undisputed fact that the document was in the Italian language, which the plaintiff could not read, write or understand (T. R. 65) and upon the further fact that the plaintiff was assured by her fiance that the signing of the document would merely result in a technical Italian citizenship, which status would in no way endanger her American citizenship. (T. R. 67) Finally the trial court held that at the time the document was signed, the plaintiff had no intention of renouncing her allegiance to the United States. (T. R. 66)

The failure formally to administer an oath has been uniformly held not to constitute the taking of an oath within the meaning of the Nationality Statute. In the matter of E———— Exclusion Proceedings decided by the Immigration and Naturalization Board in 1943, Volume 1, Page 548 Administrative Decisions under Immigration and Naturalization Laws of the United States (1940-1943); *In*

re Gogal, 75 F. Supp. 268, 270, 271 (1947); *Schioler vs. United States*, 75 F. Supp. 353, 355 (48); *McCampbell vs. McCampbell*, 13 F. Supp. 847, 849 (1936); 30 Op. A. G. 412, 421.

It should be borne in mind that the status of the plaintiff was fixed under the Act of March 2, 1907. The document containing the oath of allegiance was signed by the plaintiff on November 23, 1940. (T. R. 65) The Nationality Act of 1940 did not go into effect until January, 1941. The saving clause of the Nationality Act of 1940, Section 347 (8 U. S. C. A. Section 747) which has already been partially quoted, provides that the 1940 Act shall not effect any act, thing or matter, done or existing at the time the Act took effect. It is apparent therefore, that the effect of the signing of the oath must be measured by the Act of March 2, 1907, and not by the Nationality Act of 1940.

In respect of the oath of allegiance, the Nationality Act of 1940 has a much broader scope than the corresponding act of March 2, 1907. Section 2 of the latter act provides that an American citizen shall be deemed to have expatriated himself when he has taken an oath of allegiance to any foreign state. Section 401 (b) of the Nationality Act of 1940 provides that a citizen of the United States shall lose his nationality by taking an oath, or making an affirmation, or other formal declaration of allegiance to a foreign state. In view of the difference in language between the two statutes, the point need not be labored that the plaintiff did not take an oath of allegiance within the meaning of Section 2 of the Act of March 2, 1907.

III.

THE PLAINTIFF DID NOT BECOME EXPATRIATED BECAUSE SHE DID NOT VOLUNTARILY ABANDON HER CITIZENSHIP.

The Court of Appeals concluded that the plaintiff lost her American citizenship by becoming voluntarily naturalized under the Italian Law. (T. R. 91) The conclusion of the Court was based upon the premise that the plaintiff obtained Italian citizenship in 1940 while she was still a resident of this country. (T. R. 91) The Court recognized the rule that ordinarily expatriation connotes a voluntary renunciation or abandonment of nationality and allegiance as established in *Perkins vs. Elg*, 307 U. S. 325.

The trial court found that the plaintiff did not intend to divest herself of American citizenship (T. R. 65) and that she had no intention of renouncing her allegiance to this country (T. R. 66); that after her arrival in Italy she took no steps whatsoever to renounce her allegiance to the United States (T. R. 67); that she never voted at any election in Italy, but did vote in Wisconsin, both before and after her marriage (T. R. 67) and that the plaintiff did not in fact knowingly renounce or relinquish her American citizenship. (T. R. 67)

Because of the fact that the plaintiff was not naturalized in Italy, the major premise of the argument of the Court of Appeals is fallacious and upon recognized principles of logic the conclusion is likewise fallacious.

CONCLUSION

In conclusion, we submit that the plaintiff should not be shorn of her citizenship upon the basis of a decision of the Court of Appeals overruling a decision in her favor by the trial court, but that the United States Supreme Court should assume jurisdiction to the end that the final judgment in this case be rendered by the Court of last resort. It is further submitted that in resting its decision upon *Mackenzie vs. Hare*, 239 U. S. 299, the Court of Appeals decided the case at bar in a way probably in conflict with the applicable decision of this Court. Finally it is submitted that a prima facie showing has been made that the decision of the trial court adjudging the plaintiff to be an American citizen was correct, and that the Court of Appeals erred in vacating and setting aside that judgment and holding that the plaintiff voluntarily relinquished her American citizenship.

Respectfully submitted,

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